

2017

Multiracial Minorities: Erasing the Color Line

Bijan Gilanshah

Follow this and additional works at: <http://scholarship.law.umn.edu/lawineq>

Recommended Citation

Bijan Gilanshah, *Multiracial Minorities: Erasing the Color Line*, 12 LAW & INEQ 183 (2017).
Available at: <http://scholarship.law.umn.edu/lawineq/vol12/iss1/6>

Law & Inequality: A Journal of Theory and Practice is published by the
University of Minnesota Libraries Publishing.



Multiracial Minorities: Erasing the Color Line

Bijan Gilanshah*

Cross

My old man's a white old man
 And my old mother's black.
 If ever I cursed my white old man
 I take my curses back.
 If ever I cursed my black old mother
 And wished she were in hell,
 I'm sorry for that evil wish
 And now I wish her well.
 My old man died in a fine big house.
 My ma died in a shack.
 I wonder where I'm gonna die,
 Being neither white nor black?

—Langston Hughes¹

In the summer of 1992, nearly four hundred multiracial and biracial² individuals descended on Bethesda, Maryland to attend

* Judicial Law Clerk, Circuit Court of Fairfax County, Nineteenth Judicial District of Virginia; J.D. 1993, University of Virginia School of Law; B.A. 1990, George Mason University; Member of the Virginia State Bar.

1. Langston Hughes, *Cross*, in *SELECTED POEMS OF LANGSTON HUGHES* 158 (1959).

2. At some level, all individuals are genotypically mixed. Nonetheless, the terms "multiracial" and "biracial" have been specifically defined as follows: "Biracial refers to someone with two socially and phenotypically distinct racial heritages — one from each parent *Multiracial* includes the case of the biracial person and persons synthesizing two or more diverse [racial] heritages, such as the person with African, Indian, and European heritages." Maria P.P. Root, *Within, Between, and Beyond Race*, in *RACIALLY MIXED PEOPLE IN AMERICA* 3 n.1 (Maria P.P. Root ed., 1992). This essay will adhere to the term "multiracial."

While most of the academic literature discussing the issues surrounding multiraciality places primary, if not sole, emphasis on the Black/White mixture, this article seeks to address issues which can be generalized to most combinations of racial mixtures. However, particular emphasis is placed on racial mixtures where one parent is a member of the White majority (the superordinate parent) and the other is a member of a phenotypically distinct ethnic minority (the subordinate parent). This focus allows the tensions associated with multiracial issues, and race relations generally, to be analyzed more clearly. See, e.g., Carla K. Bradshaw, *Beauty and the Beast: On Racial Ambiguity*, in *RACIALLY MIXED PEOPLE IN AMERICA*, *supra*, at 77, 87 ("The polarized racial climate [in the United States] may be particularly difficult for White-minority biracial individuals"). Therefore, idiosyncratic issues and concerns surrounding White/White racially mixed individuals, such as

the first national gathering of the multiracial community.³ The event was named the Loving Conference in celebration of the 25th anniversary of the 1967 Supreme Court decision in *Loving v. Virginia*⁴ which held Virginia's anti-miscegenation⁵ statute unconstitutional.⁶ The primary purpose of the conference was to gain more political clout and recognition by lobbying the federal government to modify its existing racial classifications.⁷ Specifically, the multiracial group asked the U.S. Bureau of the Census to add a multiracial category to the decennial census questionnaire in 2000.⁸ As one author recently noted, "[w]hereas one of the breakthroughs of the civil rights movement was empowerment of American racial minority groups by self-naming, this process is just beginning among multiracial persons."⁹ The Loving Conference placed the American government on notice that a new multiracial movement had found its way on to the national political stage. Individuals identifying themselves as multiracial, and thereby existing in a state of flux, are demanding clarification of their nebulous social and legal status and seeking official recognition as a distinct, powerful social unit with idiosyncratic cultural, social and legal interests.

This article examines the cultural, social and legal issues surrounding the new multiracial movement and its accompanying push for legal recognition. In Part I, this article first attempts to discern the approximate size of the multiracial population in the United States. Additionally, Part I analyzes the individual socio-psychological concerns of multiracial individuals. Finally, Part I discusses the importance of the multiracial community's ability to identify certain unifying characteristics, such as the dual-identity

English/Polish or German/Italian, are not addressed in this essay and do not fit the definition of multiracial previously cited.

3. Elizabeth Atkins, *Black or White? A new category would eliminate a racial choice*, DET. NEWS, June 14, 1992, at 4A.

4. 388 U.S. 1 (1967).

5. 'Miscegenation', from the Latin *miscere* (mix) and *genus* (race) was coined by the authors of an anonymous pamphlet, *Miscegenation: The Theory of the Blending of the Race*, published in 1864, in reality an attempt by Democrats David Croly and George Wakeman to attribute favorable views on racial mixing to the Republicans and thereby aid the Democratic candidate for president.

ROBERT J. SICKELS, RACE, MARRIAGE AND THE LAW 151 n.2 (1972).

6. *Loving*, 388 U.S. at 12.

7. Atkins, *supra* note 3.

8. *Id.* Carlos Fernandez, president of the Association for Multi-Ethnic Americans (AMEA), and Romona Douglas, vice-president of AMEA, met with Census officials and Terri Ann Lowenthal, staff director for Rep. Thomas Sawyer (D-Ohio), chairman of the House Subcommittee on Census and Population. *Id.* Fernandez and Douglas were to testify in the fall of 1992 at a Congressional hearing in support of a new category. *Id.*

9. Root, *supra* note 2, at 7 (citation omitted).

experience, which may further the movement's attempt to achieve separate and distinct legal status.

Part II turns to a brief survey of the historical legal and social treatment of the mulatto, or Black/White multiracial individual.¹⁰ This discussion identifies two distinct stages of legal control that were developed to cope with the so called "mulatto dilemma."¹¹ First stage legal controls endeavored to regulate the production of mulatto offspring, while second stage controls attempted to control the resulting mixed-race population.

Part III examines both the contemporary legal treatment of multiracial persons and race-related obstacles which hinder official recognition of multiracials. In particular, Part III examines the inter- and intra-group costs and benefits of official governmental recognition of a mixed-race category, including associated concerns of increased intra- and interracial group tension and conflict. Finally, this article concludes that a limited form of governmental recognition would provide an effective short term solution to the social and legal problems surrounding multiracial culture in the United States.

I. Definitions

A. *Numbers: General Trends and Approximate Size of the Multiracial Community in the United States*

In order to warrant distinct governmental recognition, the multiracial community must first demonstrate that the mixed race movement represents a sufficiently large social unit.¹² Because the

10. The term "mulatto," often considered derogatory, is referenced quite frequently throughout the academic literature discussing multiraciality and, historically, has been used to refer to multiracial individuals of a mixed Black/White racial heritage. See, e.g., PAUL R. SPICKARD, *MIXED BLOOD: INTERMARRIAGE AND ETHNIC IDENTITY IN TWENTIETH-CENTURY AMERICA* 329-31 (1989) (referring to depictions of mulattoes in fiction, theatre, film, and scholarly literature); see also JOHN G. MENCKE, *MULATTOES AND RACE MIXTURE: AMERICAN ATTITUDES AND IMAGES, 1865-1918* at ix (1979); EDWARD BYRON REUTER, *THE MULATTO IN THE UNITED STATES* 12 (1918). The term "mulatto" is derived from the Spanish word for mule, "a hybrid creature that's part horse, part donkey." Sally MacDonald, *Census Can't Make Sense Out of Race — Choices Change Over Years*, SEATTLE TIMES, June 28, 1992, at A11. One author defines the term mulatto as "designat[ing] the first generation of hybridization between the Negro and Caucasian races." REUTER, *supra*, at 12.

11. The term "mulatto dilemma" refers to the historical derogation of Black/White biracial individuals in the United States and societal attempts to deny their biraciality. See Part III, *infra*. See also Itabari Njeri, *Mixed Race Generation Faces Identity Crisis*, L.A. TIMES, Apr. 24, 1988, § VI, at 11 (using the term "mulatto dilemma" to refer to the identity crisis faced by Black/White biracial children in the United States today).

12. The multiracial community's arguments will undoubtedly become increasingly persuasive and politically influential if large numbers of individuals subscribe

Bureau of the Census does not officially recognize a multiracial category, a determination of the size of the multiracial population is difficult.¹³ Nonetheless, an analysis of various sources, including 1990 decennial census data demonstrates that the size of the multiracial population is significant.

The 1990 decennial census used five racial categories.¹⁴ The five categories were White; Black; American Indian, Eskimo or Aleut; Asian or Pacific Islander; and Other Race.¹⁵ The Bureau of the Census Summary of Population and Housing Characteristics notes that the Other Race category includes persons "providing write-in entries such as multiracial, multiethnic, mixed, interracial . . . or a Spanish/Hispanic origin group (such as Mexican, Cuban, or Puerto Rican)"¹⁶ In 1990, 9,804,847 persons out of a total United States population of 248,709,873 placed themselves in the Other

to the movement's general concerns and objectives. Thus, the movement's political viability is necessarily intertwined with the size of the affected population. The larger the group, the less esoteric the group's concerns.

In equal protection jurisprudence, however, the term "minority" does not have merely numerical denotation[s] but refers to identifiable and specially disadvantaged group[s]." BLACK'S LAW DICTIONARY 997 (6th ed. 1990) (citing *Graves v. Barnes*, 343 F. Supp. 704, 730 (W.D. Tex. 1972)). Thus, to the extent mixed individuals form a legally cognizable multiracial minority group, numbers may prove less relevant.

13. See *infra* notes 14-20 and accompanying text.

14. BUREAU OF THE CENSUS, U.S. DEPT OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING: SUMMARY POPULATION AND HOUSING CHARACTERISTICS app. at B-11 to B-13 (Mar. 1992). But cf. A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 2021 n.32 (1989) (asserting that a time-tested, uniform definition of "race" has proven elusive).

Most contemporary commentators agree that race is primarily a social construct. See MICHAEL BANTON, *RACIAL AND ETHNIC COMPETITION* 32-59 (1983) (discussing race as type, race as sub-species, race as a folk concept, race as administrative category, race as minority); see also Paul R. Spickard, *The Illogic of American Racial Categories*, in *RACIALLY MIXED PEOPLE IN AMERICA*, *supra* note 2, at 12, 16 (race is primarily about culture and social structure, not blood or genes); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1, 28-36 (1991) (arguing that (1) in colonial times, racial classifications were highly fluid, (2) science disguises the mutability of racial categorizations, and finally (3) the Supreme Court has historically relied on four different concepts of race: status-race, formal-race, historical-race, and culture-race).

Indeed, Office of Management and Budget Federal Statistical Directive No. 15, to which the 1990 Census generally adhered in formulating its racial categories, states, "these [racial] classifications should not be interpreted as being scientific or anthropological in nature" Directive No. 15, *Race and Ethnic Standards for Federal Statistics and Administrative Reporting*, 43 Fed. Reg. 19,269 (1978).

15. BUREAU OF THE CENSUS, *supra* note 14, at app. B-11 to B-13.

16. *Id.* at app. B-12. Evidently, for the multiracial community, the ability to write in one's self-identified racial heritage is insufficient to legitimize the community.

Race category.¹⁷ Other Race, while seemingly the category with which most multiracial individuals would identify, provides little guidance as to the size of the multiracial population as of 1990.¹⁸ The nine million person figure is probably over inclusive. For example, persons of Hispanic origin may not be multiracial. The number does demonstrate, however, that a sizeable portion of the population in the United States is unable to identify with the five racial categories recognized by the Bureau of the Census.¹⁹ Unfortunately, while various authors and journalists have attempted to find hard empirical numbers measuring the size of the multiracial population, the data does not provide a sound basis for confidently reaching even approximate numerical conclusions.²⁰

Other indirect indicia, however, serve as evidence of the general size and possible increase in size of the multiracial population. First, the Bureau of the Census recently published a report on population characteristics which listed statistical information regard-

17. *Id.* at Table 2, 59. The Bureau noted, "The data for race represents self-classification by people according to the race with which they most closely identify." *Id.* at app. B-11. By requiring multiracial individuals to categorize themselves so as to most "closely identify" with only one of their racial heritages, the Bureau denies these individuals their full identities. This forced choice wrongly assumes that multiracial individuals cannot simultaneously identify with multiple racial heritages — a principal unifying characteristic of the multiracial community. Indeed, by forcing this rigid choice, the Bureau implies that individuals are incapable of possessing fluid identities and denies their ability to adapt to various circumstances. Notably, the Bureau further states, "If a person could not provide a single race response, the race of the mother was used." *Id.*

18. One author, however, has taken the 1990 census figures as strong evidence that there has been a significant increase in the multiracial population. See Carlos A. Fernandez, *La Raza and the Melting Pot: A Comparative Look at Multiethnicity*, in *RACIALLY MIXED PEOPLE IN AMERICA*, *supra* note 2, at 126, 141 n.2 (arguing that a significant increase in the mixed population "can be found in the 1990 census, in which the 'other' population, the category chosen by many mixed people, was the third-fastest growing group (45.1% change since 1980) . . ."). But cf. BUREAU OF THE CENSUS, *supra* note 14, at app. B-13 (warning of comparability problems and measurement error resulting from comparisons between censuses). Any assumption that most persons checking the Other Race category are of mixed race is subject to serious dispute, especially considering that all persons of Hispanic origins are also included in the Other Race classification. *Id.* at app. B-12.

19. See, e.g., David E. Hayes-Bautista and Gregory Rodriguez, *Latinos Are Redefining Notions of Racial Identity*, L.A. TIMES, Jan. 13, 1993, at 7. Nearly 51 percent of Latinos in California categorized themselves in the 1990 decennial census not as white or any other race, but as "hybrid Americans, just as America is a hybrid nation." *Id.* Hayes-Bautista and Rodriguez suggest that Latino Americans are a "wildly heterogeneous population whose history has been one of mixture." *Id.* Most, therefore, categorized themselves as "other." *Id.*

20. See, e.g., Joan Walsh, *You Can See The World in Their Faces*, S.F. EXAMINER IMAGE, Feb. 9, 1992, at 10 (claiming that "[b]y conservative estimates, more than 100,000 children are born to interracial couples in the United States every year, a three-fold increase since the 1960s.") The author acknowledges parenthetically that "[t]here's no accurate count, since the U.S. Census doesn't include a multiracial category" *Id.*

ing interracial marriages.²¹ The report attests that in 1991 there were approximately 994,000 interracial couples compared to the 310,000 figure derived from the 1970 decennial census.²² Although the Census Bureau specifically mentions that the difference may be partially due to measurement error, the increase appears significant. The increase in interracial marriage strongly suggests that a concomitant increase in the number of offspring from such unions will follow, thus increasing the multiracial population as a whole.²³

Evidence of the size of the multiracial population includes the "proliferation of community and campus interracial/multiethnic advocacy and support groups over the last decade, culminating in November 1988 with the founding of the first nationwide [multiracial advocacy] organization, the Association of Multiethnic Americans (AMEA)."²⁴ The more than thirty multiracial organizations across the country include Interracial/Intercultural Pride in Berkeley, Multiracial Americans of Southern California in Los Angeles, the Biracial Family Network in Chicago,²⁵ and the Interracial Family Alliance of Houston.²⁶ While multiracial support organizations have existed in the past,²⁷ the emergence of a national organization such as the AMEA demonstrates the recent proliferation of multiracial identity.

21. ARLENE F. SALUTER, U.S. DEPT OF COMMERCE, MARITAL STATUS AND LIVING ARRANGEMENTS: MARCH 1991 (1992).

22. *Id.* at 7. The 994,000 figure is broken down as follows: 231,000 Black-White couples; 720,000 White-"other" couples; 43,000 Black-"other" couples ("other" excludes Black and White). *Id.* The Bureau specifically notes:

This increase is partially attributable to the difference between the surveys (Current Population Survey (CPS) versus the Decennial census). When very small segments of the population are compared from one survey to another, the numerical differences may appear large but may be due (at least in part) to sampling variability.

Id.

23. Taylor Gibbs, a clinical psychologist at the University of California at Berkeley, claimed in 1988 that there were approximately one million children of Black/White marriages, based on the 1980 census. Njeri, *supra* note 11, at 11. The intermarriage rate (as high as 20% of all marriages in California) is causing a biracial baby boom. Walsh, *supra* note 20, at 10.

24. Fernandez, *supra* note 18, at 141 n.2.

25. G. Reginald Daniel, *Beyond Black and White: The New Multiracial Consciousness*, in *RACIALLY MIXED PEOPLE IN AMERICA*, *supra* note 2, at 333, 335.

26. Barbara Karkabi, *Love, Marriage, Race and Kids: Interracial families build successful lives with support of family, church and an alliance of friends*, *HOUS. CHRONICLE*, Oct. 11, 1992, *Lifestyle*, at 1.

27. See Daniel, *supra* note 25, at 335. Interracial support groups in existence earlier in this century include the Manasseh Clubs (named after the biblical Joseph's half-Egyptian son) in Milwaukee and Chicago between 1892 and 1932, the Penguin Club in New York during the 1930s, and the Miscegenation Club in Los Angeles in the 1940s. *Id.*

Finally, the recent portrayal of interracial romance in the film industry demonstrates the heightened visibility of the multiracial population in contemporary society. In fact, the "straightforward honesty" of interracial romance in recent American cinema is "unprecedented" in history.²⁸ A few very recent examples include: *The Bodyguard*, *The Crying Game*, *Flirting*, *Jungle Fever*, *Love Field*, *Malcolm X*, *Mississippi Masala*, *Mr. Baseball*, *Sister Act* and *Wayne's World*.²⁹ To the extent this phenomenon mirrors changing social attitudes and societal behavior, this segment of pop culture strongly suggests that the multiracial culture is not only significant, but an increasingly effectual social unit in twentieth-century American society.³⁰

B. The Identity Crisis: Toward a Unifying Intra-Group Characteristic

Multiracial individuals are often asked, "What are you?" or "Where are you from?" The ambiguous gap resulting from the multiracial individual's inability to belong to one monoracial group creates a lack of identity that is perpetuated by the United States government racial classifications which force multiracial individuals to identify as "other."³¹ Multiracial individuals constantly confront sociological and psychological identity questions, either through confrontation with inquiring third parties, or through personal missions to resolve the psychological tensions within.³² In general, multiracial people have problems coping with their marginal status.

Some multiracials, for various reasons, adopt an either/or approach to identity definition by accepting one racial heritage in virtual denial of their other racial self.³³ Others, however, attempt to

28. Bob Strauss, *Is love colorblind?*, ST. PETERSBURG TIMES, Dec. 22, 1992, at 1D.

29. *Id.*

30. It is unlikely, however, that the proliferation of interracial romance in recent films is directly attributable to affirmative efforts of the multiracial community to gain increased acceptance of racial amalgamation. Nonetheless, the phenomenon suggests that the multiracial movement is significant enough to gain the attention of the film industry.

31. See *supra* notes 14-19 and accompanying text; see also MENCKE, *supra* note 10, at 233 ("[T]he position of the mulatto, the product of racial crossing, has been marked by a poignant anomalousness.")

32. Race is by no means only negative, however. From the point of view of subordinate peoples, race can be a positive tool, a source of belonging, mutual help, and self-esteem. Racial categories . . . identify a set of people with whom to share a sense of identity and common experience . . . and also provide[] the basis for common political action.

Spickard, *supra* note 14, at 19.

33. Bradshaw, *supra* note 2, at 79. One aspect of this exercise of racial self-denial is captured in a concept called "passing." Passing is "an attempt to achieve

grasp their duality by assimilating their various racial heritages on a psychological and social level. The cornerstone of the mixed-race movement lies in the multiracial person's ability to maintain and cope with his or her dual identity and thereby avoid societal pressure to make the either/or identity choice. In this vein, the political and legal viability of the multiracial movement remains largely contingent on the multiracial individual's ability to claim cultural, sociological, psychological and racial uniqueness. This uniqueness, in turn, depends on the multiracial's ability to claim and maintain his or her distinctive dual self.³⁴

Early academic discussions of multiracial identity development primarily focused on the negative psychological aspects of racially ambiguous individuals. In 1928, R.E. Park used the term "marginal man" to refer to individuals living simultaneously in two distinct cultural worlds.³⁵ E.V. Stonequist, a subsequent student of

acceptability by claiming membership in some desired group while denying other racial elements in oneself . . ." *Id.* It is likely that the more the multiracial phenotypically resembles the White majority, the greater the likelihood of majority social acceptance. Thus, a phenotypically light-skinned multiracial may attempt to conceal her African heritage in order to reap the benefits awarded to members of White majority culture.

The requirements for passing in White majority culture have generally been light skin, sharp features, and smooth hair. SPICKARD, *supra* note 10, at 333; see also IRWIN KATZ & PATRICIA GURIN, RACE AND THE SOCIAL SCIENCES 277-78 (1969) (arguing that skin color restricts Blacks' "freedom of social action" thereby constituting a resource deficit for most members of the Black community). One's ability to "pass" might be further facilitated by the adoption of a European surname and proficient English language skills. Bradshaw, *supra*, at 80.

34. For many multiracial persons, three racial identity choices are available. The multiracial person may choose to identify with his or her maternal racial heritage, paternal racial heritage or assimilate both racial heritages by developing a "fluid" third identity — one which draws from both racial heritages and is a more flexible experience of self. See Robin L. Miller, *The Human Ecology of Multiracial Identity*, in RACIALLY MIXED PEOPLE IN AMERICA, *supra* note 2, at 24, 33. See also James H. Jacobs, *Identity Development in Biracial Children*, in RACIALLY MIXED PEOPLE IN AMERICA, *supra* note 2, at 190 (discussing the stages of identity development experienced by biracial children); Jewelle Taylor Gibbs & Alice M. Hines, *Negotiating Ethnic Identity: Issues for Black-White Biracial Adolescents*, in RACIALLY MIXED PEOPLE IN AMERICA, *supra* note 2, at 223 (describing a study of racial identity among biracial adolescents). The array of choices is compounded when multiracials, themselves, produce offspring. For instance, the children of an Arab/Asian mixed mother and Black/White mixed father present their children with a complex set of identity choices.

Similar issues have arisen in the transracial adoption debate. See generally Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1254-55 (1991) (concluding that elimination of official preference for same-race placement is the "wise course," especially in light of evidence suggesting that transracial adoptees "do as well on measures of psychological and social adjustment as black children raised inracially in relatively similar socio-economic circumstances.").

35. Christine C. Iijima Hall, *Please Choose One: Ethnic Identity Choices for Biracial Individuals*, in RACIALLY MIXED PEOPLE IN AMERICA, *supra* note 2, at 250 (cit-

Park's research, elaborated on Park's concept but espoused a negative view of the marginal person.³⁶ In his book, *The Marginal Man*, Stonequist noted that the marginal person "is poised in psychological uncertainty between two (or more) social worlds; reflecting in his soul the discords and harmonies, repulsions and attractions of these worlds"³⁷ For Stonequist, achieving a psychologically healthy dual identity, one *sui generis*, was an impossibility because the mixed person constantly confronted conflicting socio-psychological messages from opposing social and racial worlds.³⁸ Furthermore, Stonequist believed that one of these social worlds was always dominant in the mixed person's psyche so that the multiracial individual necessarily identified with one dominant social world (or racial heritage) to the virtual exclusion of the other.³⁹ Despite Stonequist's negative view of multiracial individuals, the fact that he acknowledged their unique identity is significant.

Subsequent sociological and psychological studies have attacked Stonequist's views of the marginal man and have argued that being a "marginal" person does not lead to a confused and psychologically debilitated marginal personality.⁴⁰ These studies emphasize that the marginal (multiracial) person may fully develop a psychologically comfortable dual identity with "the ability to identify with more than one culture and acquire a wide range of competencies and sensitivities."⁴¹ A relatively recent study of mixed-race (Black/White) British children generally agrees with the proposition that multiracial persons need not make an either/or choice

ing Robert E. Park, *Human Migration and the Marginal Man*, 33 AM. J. SOCIOLOGY, 881 (1928)).

36. *Id.* (citing E.V. STONEQUIST, *THE MARGINAL MAN: A STUDY IN PERSONALITY AND CULTURE CONFLICT* 8 (1937)).

37. E.V. STONEQUIST, *THE MARGINAL MAN: A STUDY IN PERSONALITY AND CULTURE CONFLICT*, 8 (1937).

38. *Id.*

39. *Id.*

40. Iijima Hall, *supra* note 35, at 251 (citing Aaron Antonovsky, *Toward a Refinement of the "Marginal Man" Concept*, 44 SOCIAL FORCES 57 (1956); Noel P. Gist, *Cultural Versus Social Marginality: The Anglo-Indian Case*, 28 PHYLON 361 (1967); Milton M. Goldberg, *A Qualification of the Marginal Man Theory*, 6 AM. SOCIOLOGICAL REV. 52 (1941); Arnold W. Green, *A Re-examination of the Marginal Man Concept*, 26 SOCIAL FORCES 167 (1947); Alan C. Kerckhoff & Thomas C. McCormick, *Marginal Status and Marginal Personality*, 34 SOCIAL FORCES 48 (1955); Roy Dean Wright & Susan N. Wright, *A Plea For a Further Refinement of the Marginal Man Theory*, 33 PHYLON 361 (1972)).

41. *Id.* (citing M. Ramirez, A. Castaneda & B.G. Cox, *A bicultural inventory for Mexican-American college students* (unpublished manuscript)). Indeed, some authors have suggested that the marginal person has a "wider horizon, keener intelligence, more detached and rational viewpoint . . . [and] is always relatively the more civilized human being." Robert E. Park, *Introduction to STONEQUIST, supra* note 37, at xiii, xvii-xviii.

when they engage in the intensely personal process of defining their racial identity.⁴²

In sum, experience of the "dual" self serves as a common unifying characteristic of multiracial individuals. The new multiracial movement is composed of individuals that have either successfully come to terms, socially and psychologically, with their dual racial identities or those who continue to seek to reconcile their dual racial selves. While past socio-psychological studies suggest that the multiracial individual must make an either/or choice during the process of identity development, recent studies suggest that multiracial individuals can maintain fluid and flexible dual identities. This experience of dual racial identity is the common unifying characteristic to which most multiracials attach.⁴³ The ability of the multiracial community to identify idiosyncratic, commonly-held concerns, such as the dual identity experience, will prove extremely important in the multiracial movement's efforts to question the logic underlying outmoded census classification schemes.⁴⁴ Having laid this foundation, this article turns to analyzing the historical treatment of the "mulatto."⁴⁵

II. The Mulatto: A Brief Legal History

A historical examination of the development of the legal treatment of multiracial persons must include a discussion of pseudo-scientific and literary myth. This historical analysis will inform subsequent discussions of the contemporary legal and social treatment of the multiracial person in American society. The academic literature has primarily discussed the legal and extra-legal historical development surrounding interracial sex, marriage and off-

42. Anne Wilson, *'Mixed Race' Children in British Society*, 35 BRITISH J. SOCIOLOGY 42 (1984).

Although some sociologists assume that the marginal position is inherently personally and socially intolerable and that the individual response must be to wholeheartedly embrace either a black or white identity, others present evidence suggesting that it is possible for mixed race people to remain permanently 'in-between', without encountering social or psychological ill-effects.

Id. at 59.

43. Multiracial individuals may be unique in other respects, such as their mixed physical appearance, but the ability to socially and psychologically maintain a dual identity seems the principal unifying characteristic of the new multiracial community. Maintenance of a dual identity is a difficult and complex task in a society that chooses to define its social units by race and only in monoracial terms.

44. *Cf.* Wilson, *supra* note 42, at 43. For the field of sociology, "[t]he issue is whether or not mixed race people form a sufficiently distinguishable group to be studied as a separate social unit." *Id.* Wilson finds empirical support that the multiracial group is sufficiently distinct for purposes of sociological study. *Id.* at 59-60.

45. See *supra* note 11.

spring with reference to the Black/White mix.⁴⁶ This academic discussion and analysis, however, generally applies to individuals of various multiracial backgrounds.

The legal control of multiracial offspring historically occurred at two stages. First stage controls exemplified an attempt to ban mixed offspring, namely by state prohibitions on interracial sex and marriage. When the first level controls proved ineffective, states instituted second stage control measures to contain the resulting multiracial population. Interestingly, such extra-legal sources as pseudo-scientific myths, religious principles and tenets of natural law provided the rationale for both levels of control.

A. First Stage Controls

In 1967, the United States Supreme Court ruled Virginia's anti-miscegenation statute unconstitutional in *Loving v. Virginia*, thereby giving constitutional protection to interracial marriage.⁴⁷ At the time of the *Loving* decision, sixteen states prohibited and punished interracial marriage.⁴⁸ As recently as 1955, however, "[m]ore than half of the States of the Union [had] miscegenation statutes."⁴⁹ Thus, as of 1955, the majority of states had in place first stage controls to regulate marriage and thereby prevent the birth of interracial children.

Prior to the Supreme Court decision in *Loving*, courts proffered various pseudo-scientific, religious and natural law justifications in upholding racist anti-miscegenation statutes.⁵⁰ In *Naim v.*

46. See *supra* text accompanying note 10.

47. 388 U.S. 1 (1967).

48. *Id.* at 6. In addition to Virginia, those states included Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia. *Id.* at n.5. In the fifteen years prior to the *Loving* decision the following fourteen additional states had repealed legal restrictions on interracial marriage: Arizona, California, Colorado, Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming. *Id.*

49. Higginbotham & Kopytoff, *supra* note 14, at 204 n.239 (quoting *Naim v. Naim*, 87 S.E. 749, 753 (Va. 1955)).

50. Fiction writings during the turn of the century also expressed racist attitudes toward multiracial individuals. MENCKE, *supra* note 10, at 189. Both Black and White writers portrayed the mulatto as a tragic, confused and an unnatural figure. *Id.* Furthermore, "[t]here was . . . a separate, highly conspicuous group of white writers who viewed the mixed-blood in a negative perspective It is not unlikely that, as racial propaganda, many [writings] contributed significantly to a solidification of white attitudes regarding . . . the inflammatory question of racial amalgamation." MENCKE, *supra* note 10, at 189-90; cf. DREW L. SMITH, *THE LEGACY OF THE MELTING POT* 192-93 (1971) (arguing that continued tolerance and acceptance of racial amalgamation and intermixture will ultimately lead to the total destruction of the United States as a nation-state in a manner similar to the fall of the ancient Roman Empire).

Naim, a 1956 case involving the intermarriage of a Chinese male and a White female, the Virginia Supreme Court upheld Virginia's anti-miscegenation statute reasoning that such statutes:

preserve the racial integrity of its citizens, . . . regulate the marriage relation so that it shall not have a mongrel breed of citizens . . . prevent the obliteration of racial pride [that would] permit the corruption of blood [and] weaken or destroy the quality of its citizenship.⁵¹

In *Loving* the trial judge upheld a similar statute reasoning:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.⁵²

The highest court in Kentucky expressed similar fears and attitudes toward racial mixing.⁵³ In *Berea College v. Commonwealth*, the Court reasoned that, "[t]he separation of the human family into races, . . . is as certain as anything in nature."⁵⁴ Additionally, the justices noted that racial prejudice serves as "nature's guard to prevent amalgamation of the races" and, therefore, corruption of the blood.⁵⁵ Notably, due to a lack of political consensus on the interracial sex issue, the Supreme Court of the United States ducked review of various decisions, including *Naim v. Naim*, which were "obvious [anti-miscegenation statute] test cases"⁵⁶ — cases that arose nearly twelve years prior to the Court's final decision in *Loving*.

B. Second Stage Controls

Although the states erected first stage legal controls to prevent interracial marriage, such barriers failed to prevent the genesis of a multiracial population. Courts and legislatures, therefore, constructed secondary legal controls to confront the mixed offspring dilemma. Using Virginia as an example, the secondary controls took the form of manipulating racial definitions and classifications.⁵⁷

51. 87 S.E.2d 749, 756 (Va. 1955).

52. *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

53. *Berea College v. Commonwealth*, 94 S.W. 623 (Ky. 1906), *aff'd*, *Berea College v. Kentucky*, 211 U.S. 45 (1908).

54. *Id.* at 626.

55. *Id.*

56. Higginbotham & Kopytoff, *supra* note 14, at 2025 n.242 (quoting DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 56-57 (2d ed. 1973)).

57. Although the state of Virginia is offered as the sole example using secondary control techniques, other states probably adopted similar secondary control techniques. However, "[t]here is probably no better place than Virginia to examine the

Virginia essentially used three legal classifications: White, Indian, and Negro or mulatto.⁵⁸ Thus, mulattoes and Blacks held equivalent legal positions.⁵⁹ These classifications gave rise to the need for a legal definition of race in order to determine appropriate legal groupings.⁶⁰ After emancipation, the White majority modified the racial definitions so as to draw a clear line between themselves and those they considered racially inferior.⁶¹ From 1785 to 1910 a mulatto was defined as someone who had "one-fourth Negro blood."⁶² Then, in 1910, the Virginia legislature expanded the definition to include anyone with "as small a proportion as one-sixteenth Negro ancestry."⁶³ In 1924, Virginia, for the first time, defined as White anyone who had no trace whatsoever of Negro blood.⁶⁴ Similarly, in 1930, the legislature used the term "colored" to mean "any person in whom there is ascertainable any Negro blood."⁶⁵

As the example of Virginia demonstrates, secondary control measures denied the very existence of the mixed individual through manipulation of government-defined racial definitions.⁶⁶ Any blurring of the color line would have subverted the logic underlying the institution of slavery — oppression based on race. Manipulation of legal definitions, although strategic and fictitious, served to maintain the clear demarcation of the races.⁶⁷

More importantly, justifications for the adoption of secondary stage controls appear less connected to principles of natural law and fear of mongrelization and more associated with a desire to

origins of the American doctrine of racial purity and the related prohibitions on interracial sex and interracial marriage." *Id.* at 1967 (calling Virginia the "mother" of slavery in the United States).

58. *Id.* at 1976.

59. *Id.*

60. *Id.*

61. *Id.* at 1968. "Before emancipation, oppression had operated largely through the institution of slavery . . . After emancipation, there was no special status of slave and oppression became entirely racial . . . [Thus], the legal definition of race became more exclusive." *Id.* at 2020.

62. *Id.* at 1978 n.49 (citing Ch. LXXVIII, 12 LAWS OF VA. 184, 184 (Hening 1823) (enacted 1785; effective 1787)).

63. *Id.* (citing Ch. 357, § 49, 1910 Va. Acts 581).

64. *Id.* (citing Ch. 371, § 5, 1924 Va. Acts 534).

65. *Id.* at 2021 (citing Ch. 85, § 67, 1930 Va. Acts 97).

66. See Higginbotham & Kopytoff, *supra* note 14, at 2005.

For the separation of slaves from free men depended on a clear demarcation of the races, and the presence of mulattoes blurred this essential distinction. Accordingly, [the colonist] made every effort to nullify the effects of racial intermixture. By classifying the mulatto as Negro he was in effect denying that intermixture had occurred at all.

Id. (quoting W. JORDAN, WHITE OVER BLACK 177-78 (1968)).

67. *Id.*

maintain the primacy of the white race. After emancipation, this line had to be drawn more brightly because light-skinned mulattoes blurred and threatened the color line: a line necessary to continue separation of "inferior" and "superior" peoples. While legislators and judges frequently justified their actions with pseudo-scientific theories or fears of violating the natural order,⁶⁸ subversion of racial divisions may have been their true fear.

This brief examination of the historical treatment of multiracial individuals will aid the analysis of present-day attitudes and treatment of the multiracial individual in the 1990s as the multiracial movement presses for social and legal recognition.⁶⁹ While first stage controls have been ruled unconstitutional, it is likely that remnants of second stage control mechanisms still linger.⁷⁰

III. Contemporary Legal Treatment of the Multiracial

Thus far, this article has argued that the multiracial community possesses unifying and idiosyncratic characteristics, particularly the ability of its members to maintain multiple social and psychological identities. Additionally, the article has suggested that the movement's numbers appear sufficiently large to warrant official administrative recognition. While historical, first stage legal barriers have been removed,⁷¹ "[t]he American legal system [still] lacks intermediate or 'mixed race' classifications."⁷² In effect, the present system perpetuates second-stage nonrecognition policies of the past.⁷³ The mixed community is demanding an end to

68. See also, Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 320 n.240 (1992) (asserting that the development of miscegenation laws fit into a broader scheme to maintain the social order by preventing the production of offspring from "unfit" marriage unions).

69. Presently, the Code of Virginia is devoid of racial definitions. VA. CODE ANN. § 2.1-64.32:1 (Michie 1987). The only subsection of the Code discussing racial classifications is in Chapter 7.5 where "minority" is defined as including such persons as "Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts." *Id.*

70. Even where legal control of race relations and strict racial categories have been abandoned, the social order and societal stereotypes persisted so that taboos against interracial relationships were self-perpetuating. SPICKARD, *supra* note 10, at 340 ("The slave era set a pattern for interracial sexual and marital relations that persisted well into the twentieth century.").

71. See discussion *supra* part II.A.

72. Gotanda, *supra* note 14, at 25 (a critical analysis of color-blind constitutionalism).

As previously discussed, the five racial categories used in the 1990 decennial forced multiracial individuals to adopt one monoracial category — to the exclusion of their additional heritages — or to be lumped into an Other Race category. See discussion *supra* part I.

73. See discussion *supra* part II.B.

this nonrecognition by seeking the right to legally define itself on its own terms. As stated earlier, the new multiracial movement has chosen administrative recognition and a modification of the racial categories used in the decennial census. This section first identifies the benefits associated with official recognition of the multiracial in the census, and demonstrates that the obstacles facing the multiracial movement provide "a revealing reflection of the fundamental nature of race relations in this country" ⁷⁴

A. Positive Consequences of Legal Recognition

1. Intra-Group Benefits

Official recognition of the multiracial individual by the United States Census Bureau would reverse past historical policies of non-recognition. Administrative recognition would stand as an official affirmative statement rejecting past social attitudes surrounding the miscegenation taboo and racial intermixture. This governmental recognition would validate the existence of the multiracial community and identify the mixed movement as possessing unique cultural and social attributes.⁷⁵ Indeed, for the multiracial movement, failure of the government to include a multiracial category would result in cultural genocide.⁷⁶ Furthermore, although protectionist policies of the past instilled and reinforced negative societal attitudes towards intermixture, a policy of official recognition may serve to reorient social attitudes and beliefs concerning multiracial individuals. Legal recognition would then lead to positive socio-cultural and psychological intra-group consequences.

2. Inter-Group Cooperation

Government recognition may lead to significant positive inter-group consequences in which mixed individuals may act as sensitive, objective negotiators of inter-group racial conflict.⁷⁷ As one author noted, "[t]he multiracial often find themselves acting as ambassadors among fractious peoples, preaching what is to them biological reality: We can live together."⁷⁸ With biological, psychological and sociological attachments to multiple racial heri-

74. MENCKE, *supra* note 10, at 233.

75. *See supra* note 32.

76. To the extent the multiracial individual is not socially accepted by either of his or her racial heritages due to intra- and interracial bias, official recognition would facilitate development of a third socio-cultural choice for mixed peoples — the culture of multiraciality.

77. Walsh, *supra* note 20, at 13.

78. *Id.* at 10.

tages,⁷⁹ multiracials possess unique credentials for mediating racial conflict.⁸⁰ Governmental recognition could facilitate and legitimize the multiracial individual's assumption of this negotiator role.⁸¹ While some legal scholars of the early 1990s accept the "permanence of racism" in American society,⁸² the multiracial community provides, at a minimum, hope for better interracial understanding.

Maria P.P. Root, a clinical psychologist and Clinical Associate Professor at the University of Washington suggests additional benefits resulting from the presence of the mixed individual. She states:

The accomplishment of complex identities by racially mixed persons gives us hope that if individuals have been able to resolve conflicting values, claim identities, synthesize multiple heritages, and retain respect for individual heritages in a less than embracing environment, perhaps it is possible for us eventually to do this as a nation.⁸³

Thus, regardless of the potential role of multiracials in the modern state, the very presence of mixed persons may serve to reduce racial animus between minority groups.⁸⁴ Indeed, multiracials blur and erase color lines between phenotypically distinct racial groups and

79. See discussion *supra* part I.B.

80. Thus, the mixed individual could serve in his or her negotiating capacity on two different levels: either between majority and minority groups or between minority groups. The level at which the multiracial will prove most effective will largely depend on the racial makeup of the particular mixed individual. See generally BANTON, *supra* note 14 (discussing the complex dynamics of racial conflict and competition on both group and individual levels).

Additionally, the multiracial's ability to "pass" from minority to majority, or, in the alternative, from minority to less-oppressed minority communities, without detection, further adds support to the notion that multiracials may play important roles in interracial conflict mediation. Anecdotes abound where multiracials experience racial animus when, for instance, a member of the White majority community erroneously perceives the multiracial as "one of his or her own." Under these circumstances, the multiracial simultaneously experiences both feelings of inclusion in the majority group, and feelings of oppression in the minority racial group. Unique knowledge and understanding is more fully obtained by such "mistaken identity" encounters.

81. BANTON, *supra* note 14, at 190-91 (noting that certain racial groups sometimes act as "middlemen minorities" thereby serving as intermediaries between majority and minority groups and modifying the effects of economic competition between conflicting racial groups).

82. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

83. Maria P.P. Root, *From Shortcuts to Solutions*, in *RACIALLY MIXED PEOPLE IN AMERICA*, *supra* note 2, at 342, 347.

84. See generally *supra* notes 29-34 and accompanying text noting the increasing numbers of mixed-race families and their multiracial offspring. The increase of multiracial individuals and their interracial familial relationships can only work to break down distinctions between various racial communities, thereby reducing racial prejudice.

subgroups. With these lines erased, both separatism and subjugation of minorities becomes increasingly difficult as "proper" targets of racial animus become difficult to identify with confidence. Legal recognition could facilitate this potential outcome by legitimizing the multiracials' existence and validating their presence in twentieth-century society. Finally, legal recognition would serve as a signal to minority racial groups and to society as a whole that the federal government has aborted attempts at maintaining a distinct color line — a line once adamantly maintained to legitimize suppression of "inferior" peoples.

B. Negative Consequences of Legal Recognition

Although significant intra- and inter-group benefits may result from official legal recognition, it is also evident that significant costs may accompany recognition as well — social costs which may exceed both intra- and inter-group benefits.

1. Intra-Group Conflict

The negative ramifications of legal recognition for multiracials may include increased conflict and division within the multiracial community itself. Historical (and contemporary) oppression of the Black community, when compared to other racial and ethnic minority groups, necessarily dictated and justified emphasis on Black/White mixtures in academic and literary circles. This emphasis, however, raises unique questions to which the law must respond. Should Black/White individuals who self-identify as multiracial be given priority status over other mixes? Or is a generic "multiracial" grouping sufficient?⁸⁵ Although the multiracial community possesses certain unifying characteristics which justify its presence on the national political stage, potential tensions between groups within the multiracial label should be addressed before the new multiracial movement attempts to assume its proper role in the modern state.⁸⁶

85. Yet another problem arises when a multiracial (through self-identification) chooses to identify as Hispanic in particular situations while choosing to identify as multiracial in others. To the extent the Hispanic and multiracial classifications are legally treated similarly, no distortion is brought into the classification scheme. To the extent those classifications are disparately treated, however, strategic maneuvering will undoubtedly arise and a misallocation of resources may result.

86. Conflicts surrounding the Hispanic classification have posed similar concerns. See Alex M. Saragoza, et al., *History and Public Policy: Title VII and the Use of the Hispanic Classification*, 5 LA RAZA L.J. 1, 2 (1992) (discussing difficulty in applying civil rights law to groups of diverse people aggregated under "generic racial and ethnic terms"). Lumping Hispanic subgroups into monolithic communities was

2. Inter-Group Conflict

Negative consequences of legal recognition may also include increased inter-group conflict particularly between members of distinct minority groups. Carlos Fernandez, president of the Association of Multi-Ethnic Americans, recognized this potential for increased racial conflict.⁸⁷ He recently expressed his intention to meet with civil rights organizations, such as the National Association for the Advancement of Colored People and the National Urban League, to avoid charges of elitism and preference while simultaneously discussing the new multiracial category.⁸⁸ While specific inter-minority group conflict areas remain inchoate, generalizations can be made regarding potential problem areas.

Increased racial tension may also spring from various areas of governmental intervention. First, racial statistics derived from the decennial census are often maintained in order to allocate funds to minority groups.⁸⁹ A new multiracial category will undoubtedly raise significant questions concerning the multiracial individual's ability to compete with other racial categories under various funding programs. While some may argue that the multiracial movement's present goal is limited to the pursuit of legal recognition through classification, others may suggest that the movement will eventually attempt to seek preferential governmental treatment or, in the alternative, equivalent treatment which would result in increased competition for limited federal public welfare funds.

a politically expedient tactic used to facilitate political gains and obtain a national voice for a variety of Latino subgroups. *Id.* at 21.

87. Atkins, *supra* note 3.

88. *Id.* Tension between light-skinned and dark-skinned Blacks has a long history that engenders intraracial discrimination. Recent Case, 103 HARV. L. REV. 1403, 1403 (1990); see also Susan Howard, A "Better Shade of Black", NEWSDAY INC., Jan. 11, 1993, at 36 (noting that the authors of a recently published book, THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN AMERICANS, argue that both Blacks and Whites perceive lighter-skinned Blacks as better, prettier and safer). Intra- and interracial color bias has been captured in a concept called "colorism." National Public Radio, All Things Considered, *Skin Color of Blacks May Equal Discrimination*, Dec. 2, 1992, available in LEXIS, Nexis Library, File NPR.

To the extent the Black/White multiracial represents a significant portion of the light-skinned Black population, the recent push for legal recognition only serves to exacerbate the pre-existing historical tension within the Black community. Indeed, a federal district court has recognized a cause of action based on intraracial bias under Title VII of the Civil Rights Act of 1964. Walker v. IRS, 713 F. Supp. 403 (N.D. Ga. 1989) (where, following a discharge from employment, a light-skinned Black woman successfully sought Title VII liability against her dark-skinned Black supervisor).

89. Atkins, *supra* note 3; see also Kevin Roderick, *Census Questions: Deciding What Counts in the '90s*, L.A. TIMES, at 11 ("Statistics collected in the 1990 census will be used by federal agencies to allocate more than \$35 billion a year in aid to the states, and to pass on similar amounts to cities and towns.").

More importantly, it is evident that this confusion and conflict will spread far beyond the funding issue. Indeed, the 1990 Census of Population and Housing, Race and Ethnic Origin Content Determination Report⁹⁰ lists dozens of federal legislative uses of decennial census data including: (1) establishment of guidelines for federal affirmative action plans; (2) review of state redistricting plans; (3) assistance to minority businesses in low-income areas; and (4) enforcement of federal antidiscrimination statutes.⁹¹ Thus, data on the mixed community may lead to particular government responses that could detrimentally affect other monoracial minority populations. The question of whether federal affirmative action programs should extend benefits to multiracial individuals who phenotypically resemble members of a legally-defined minority group, but choose to self-identify as multiracial due to their dual racial background, remains unanswered. Another interesting issue arises when multiracials who phenotypically resemble members of the White majority seek minority protection by choosing not to classify themselves as multiracial, but instead classify themselves as a member of a protected monoracial group such as African-American, Asian-American, or Hispanic.⁹² While blurring and erasing color lines would make the subjugation of minorities increasingly difficult, it could also conclude any preferential governmental treatment monoracial minorities enjoy. This confusion and uncertainty will undoubtedly breed tension, frustration and hostility — especially from minority communities who not only refuse to empathize with the multiracial's unique socio-psychological position, but also label multiracial identity as a form of denial or selling out.

Whether the mixed community or individual deserves equal or preferential governmental treatment as compared to minority monoracial categories is a complex issue, one that will surely spur

90. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING: CONTENT DETERMINATION REPORTS, RACE AND ETHNIC ORIGIN 42-47.

91. *Id.* Redrawing voting districts could empower multiracial communities by increasing their political voice. For example, children of Afro-Amerasian descent have been resettled in the Bronx. David Gonzalez, *For Afro-Amerasians, Tangled Emotions: Being Black, Vietnamese and American Leads to a Life 'in the Middle'*, N.Y. TIMES, Nov. 16, 1992, at B1. A voting district giving this community increased political power could feasibly be drawn pursuant to the Voting Rights Act of 1965. 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1988), *as amended*. Whether other homogeneous multiracial communities like the Afro-Amerasian community will form and influence state districting schemes remains unclear.

92. This, of course, assumes that individuals self-identifying as multiracial are not considered specially disadvantaged and worthy of protection and/or preferred treatment.

heated debate in the coming years.⁹³ While the multiracial community is presently seeking the modest goal of self-labeling, it is clear that any attempt to push beyond this initial goal may prove costly in terms of increased racial disharmony.⁹⁴ Although the future intentions of the multiracial movement remain uncertain, this uncertainty itself breeds frustration, and inter-group tensions may rise as the new multiracial movement's political voice shakes the existing social and legal infrastructure and beckons for long-awaited change.

C. A Temporary Solution

Due to the uncertainty as to the consequences of legal recognition of multiracial individuals, limited recognition seems the most sensible short-term solution to a problem that has persisted for centuries. While modification of the Census would acknowledge the multiracial community as a legitimate social, political and legal actor, its potential role must be more fully defined and analyzed before more affirmative governmental relief follows. Further analysis and observation will lead to a more definitive picture of the multiracial community and its effects on race relations in the United States.

The multiracial community should be allowed to check "multiracial" on the 2000 Decennial Census form.⁹⁵ An additional category may lead to an increase in administrative costs; but when balanced against the continuing social cost incurred by nonrecognition of multiracial minorities, such additional administrative expenses should prove inconsequential. This is especially true when one considers the Census Bureau's efforts to modify the racial classification in the questionnaire to more accurately reflect new terminologies and racial groupings.⁹⁶ In effect, limited recognition would allow the multiracial community to retain most of the positive consequences of official recognition previously discussed while

93. Indeed, it is even possible to argue that multiracial individuals, particularly those resembling the White majority, should be treated similarly to members of the White majority. As previously discussed, many multiracial individuals possess the ability to "pass" into White majority culture and obtain the benefits thereof. See Bradshaw, *supra* note 2, at 79-80; SPICKARD, *supra* note 10, at 333; see also *supra* note 33.

94. See, e.g., Walsh, *supra* note 20, at 13 (describing instances of hostility directed toward individuals who choose to identify as multiracial).

95. A "multiracial" category could also be added to various other public and private documents including birth certificates, applications to educational institutions and employment related documentation. Consistent with this article's analysis, however, any potential benefits accorded with such recognition should be foreclosed at the present time.

96. See BUREAU OF THE CENSUS, *supra* note 14, at app. B-11 to B-14.

monoracial minority groups would remain protected from any possible negative effects associated with increased racial competition and disharmony.

IV. Conclusion

The multiracial community has stepped into the national political arena and has called for social and legal change in the form of Decennial Census recognition. Multiracial individuals possess the unique ability to socially and psychologically grasp their diverse racial heritages and successfully maintain flexible dual identities. This characteristic serves to distinguish the multiracial community as an idiosyncratic social unit with distinct psychological, sociological and cultural concerns. Moreover, although specific numerical conclusions are elusive, it appears the size of the multiracial population is sufficiently large to warrant official recognition. Nonetheless, the federal government continues to adhere to archaic monoracial classification schemes and presently refuses to consider the multiracial community as a distinct social and, therefore, legally cognizable classification unit.

Sadly, such nonrecognition is not a new phenomenon. An analysis of this country's historical treatment of the mixed individual reveals that, in general, state governments developed two legal strategies to control the production of mixed offspring. States first banned interracial marriage and, because this control inevitably failed, legislatures manipulated racial classifications to deny the very existence of multiracial offspring. Both methods of control, although justified by principles of natural science and pseudo-science, represented efforts to maintain a clear color-line between superior and inferior peoples in order to justify subordination based on race.

Contemporary policies continue the historical nonrecognition of multiracial individuals by utilizing monoracial categories. Nonetheless, the new multiracial movement continues to challenge present practices and has chosen the Decennial Census as its first battleground. Importantly, an examination of multiracial classifications implicates several broader concerns surrounding race relations in the United States. Legal recognition of the multiracial individual will result in both positive and negative inter- and intra-group consequences that must be balanced when considering a satisfactory solution.

The modern state should respond to this historically neglected and manipulated community, but in a limited manner. It appears that the most viable short-term solution to the classification issue is

to allow a form of limited recognition to multiracial individuals. While such individuals would be able to assert their uniqueness by checking a "multiracial" category on the 2000 Decennial Census form, the multiracial community as a distinct legal unit would be denied the affirmative consequences of that classification. Allowing multiracials to assert their individuality will preserve positive inter- and intra-group consequences, while avoiding the negative effects of increased racial competition until the new mixed movement as a distinct, cognizable entity can be more fully defined and analyzed. This limited legal response will finally legitimize the multiracial's presence in contemporary American society, while respecting the problems associated with the perpetually changing face of race relations in the modern state.